

REPRESENTATIVE FOR PETITIONERS:

Steve Hughes, pro se

REPRESENTATIVE FOR RESPONDENT:

Michael West, Reassessment Supervisor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Steve and Torey Hughes,)	Petition No.: 84-004-15-1-5-01062-16
)	
Petitioners,)	Parcel No.: 84-09-10-351-021.000-004
)	
v.)	County: Vigo
)	
Vigo County Assessor,)	Assessment Year: 2015
)	
Respondent.)	

Appeal from the Final Determination of the
Vigo County Property Tax Assessment Board of Appeals

January 22, 2018

FINAL DETERMINATION

The Indiana Board of Tax Review (“Board”) having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

INTRODUCTION

1. The Hugheses challenged their property’s valuation. The Assessor bore the burden of proof, but she failed to offer any probative valuation evidence supporting the assessment.

And the Hugheses failed to offer any probative valuation evidence supporting a reduction below the prior year's assessment. We therefore order the subject property's 2015 assessment reduced to its 2014 assessed value of \$93,100.

PROCEDURAL HISTORY

2. The Hugheses filed a Form 130 petition with the Assessor contesting the subject property's 2015 assessment. The Vigo County Property Tax Assessment Board of Appeals ("PTABOA") issued a Form 115 notice of determination upholding the original assessment of \$116,500. The Hugheses timely filed a Form 131 petition with the Board.

HEARING FACTS AND OTHER MATTERS OF RECORD

3. On December 7, 2017, the Board's Administrative Law Judge ("ALJ"), Jacob Robinson, held a hearing on the petition. Neither the Board nor the ALJ inspected the property. Steve Hughes and Michael West were sworn as witnesses.

4. Petitioners submitted the following exhibit:

Petitioner Exhibit 1: Letter prepared by Associate Broker Debbie Hill, Coldwell Banker Troy Helman Realtors, dated December 4, 2017

5. Respondent submitted the following exhibits:

Respondent Exhibit 1A: 2014 GIS map of subject property

Respondent Exhibit 1B: 2016 GIS map of subject property

Respondent Exhibit 2A: 2014 Property Record Card for subject property

Respondent Exhibit 2B: 2015 Property Record Card for subject property

Respondent Exhibit 3: Form 130 Notice

Respondent Exhibit 4A: Signed Informal Conference Sheet

Respondent Exhibit 4B: Property Record Review Card

Respondent Exhibit 5: Test Property Record Card resulting from Informal Conference

Respondent Exhibit 6: Form 114 Notice of Hearing, dated February 22, 2016

Respondent Exhibit 7: Form 115 Notice of Final Assessment Determination, dated March 29, 2016

Respondent Exhibit 8: Form 131 Petition

6. The following items are also recognized as part of the record:

Board Exhibit A:	Form 131 Petition and attachments
Board Exhibit B:	Notice of Hearing
Board Exhibit C:	Hearing Sign-In Sheet

In addition, the Board incorporates into the record all filings by the parties and all orders and notices issued by the Board or the ALJ.

7. The subject property consists of a single-family residence located at 834 Windsor Road, Terre Haute.

SUMMARY OF THE ASSESSOR'S CONTENTIONS

8. The Assessor contends that the Hugheses do not have standing to challenge their 2015 assessment before the Board because they failed to attend the PTABOA hearing conducted to review it on March 23, 2016. This is the only instance where Mr. Hughes claims he failed to receive notice regarding an appeal. *West testimony; Resp't Ex. 6.*

9. The Hugheses previously appealed their 2012 and 2013 assessments resulting in the addition of an influence factor for those years. The influence factor remained on the 2014 assessment as well. During the 2015 reassessment period, the Assessor reviewed all of the properties in the Hughes's township and decided to remove the subject property's influence factor from the 2015 assessment because each tax year stands on its own merits. *West testimony; Resp't Exs. 2A, 2B.*

10. On February 4, 2016, the Assessor held an informal conference with Mr. Hughes and reviewed his Property Record Card ("PRC"). As a result, the Assessor made several changes to the subject property's PRC. But Mr. Hughes did not agree with those changes, which led to the scheduling of the PTABOA hearing. The PTABOA issued a

Form 115 to the Hugheses after they failed to appear at the PTABOA hearing. *West testimony; Resp't Exs. 4A, 4B, 5, 7.*

11. The Hughes's Forms 130 and 131 both question the change in value, but then primarily focus on the condition of their neighborhood without claiming any specific value for the subject property. Although the Hugheses provided valuation evidence for their 2012, 2013 and 2017 appeals before the PTABOA, they failed to do so for 2015. *West testimony; Resp't Exs. 3, 8.*
12. GIS maps of the subject property from 2014 and 2016 show there were no changes to the property during 2015. The Assessor maintains that the 2015 assessment is correct based on the cost approach. *West testimony; Resp't Ex. 1.*

SUMMARY OF THE HUGHES'S CONTENTIONS

13. West told Mr. Hughes that he needed an appraisal for 2015 and 2017. Mr. Hughes did get an appraisal for 2017, but the appraisal company wanted another \$300-\$400 appraisal fee to prepare one for 2015, which he felt was ridiculous. West then suggested Mr. Hughes contact a realtor to run comps. Mr. Hughes did so and offered a letter from Debbie Hill, an Associate Broker with Coldwell Banker Troy Helman Realtors. Hill used four homes in the Hughes's neighborhood that are within a few blocks of the subject property and concluded that the Hughes's home is worth \$73,000. Despite the fact that Hill dated her letter December 4, 2017, Mr. Hughes contends that it describes what the subject property was worth in 2015. *Hughes testimony; Pet'r Ex. 1.*

BURDEN OF PROOF

14. Generally, a taxpayer seeking review of an assessment must prove that the assessment is wrong and what the correct value should be. Indiana Code § 6-1.1-15-17.2 creates an exception to the general rule and assigns the burden of proof to the assessor where (1) the

assessment under appeal represents an increase of more than 5% over the prior year's assessment for the same property, (2) or the taxpayer successfully appealed the prior year's assessment, and the current assessment represents an increase over what was determined in the appeal, regardless of the level of that increase. I.C. § 6-1.1-15-17.2(a), (b) and (d).

15. The Hughes's assessment increased by more than 5% from 2014 to 2015. The Assessor conceded that she therefore bears the burden of proof.

OBJECTIONS

16. The Assessor objected to the admission of Petitioner's Exhibit 1, Hill's letter, because the Hugheses failed to exchange it before the hearing. The Assessor argued that because she had not seen Hill's letter prior to the hearing, she had not had an opportunity to investigate any of Hill's comparable sales. Mr. Hughes admitted that he had not exchanged Hill's letter before the hearing because "[s]he just emailed it to me." Our ALJ took the objection under advisement.
17. Our procedural rules require parties to exchange copies of their documentary evidence at least five business days before a hearing. 52 IAC 2-7-1(b)(1). This requirement allows parties to be better informed and to avoid surprises. It also promotes an organized, efficient, and fair consideration of the issues. We may exclude evidence based on a party's failure to comply with the exchange rule where it appears that admitting the exhibit would prejudice the opposing party. *See* 52 IAC 2-7-1(f).
18. Here, we find that the Hughes's failure to exchange their exhibit produced the type of unfair surprise the exchange rule is intended to prevent. To admit the exhibit when the Assessor had no opportunity to review it or research any of the comparable sales Hill relied on to develop her opinion of value would clearly prejudice the Assessor's case. We therefore sustain the Assessor's objection.

ANALYSIS AND CONCLUSIONS OF LAW

19. The goal of Indiana's real property assessment system is to arrive at an assessment reflecting the property's true tax value. 50 IAC 2.4-1-1(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 3. "True tax value" does not mean "fair market value" or "the value of the property to the user." I.C. § 6-1.1-31-6(c), (e). It is instead determined under the rules of the Department of Local Government Finance ("DLGF"). I.C. § 6-1.1-31-5(a); I.C. § 6-1.1-31-6(f). The DLGF defines "true tax value" as "market value in use," which it in turn defines as "[t]he market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property." MANUAL at 2.
20. All three standard appraisal approaches—the cost, sales-comparison, and income approaches—are "appropriate for determining true tax value." MANUAL at 2. In an assessment appeal, parties may offer any evidence relevant to a property's true tax value, including appraisals prepared in accordance with generally recognized appraisal principles. *Id.* at 3; *see also Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006) (reiterating that a market value-in-use appraisal that complies with the Uniform Standards of Professional Appraisal Practice is the most effective method for rebutting the presumption that an assessment is correct). Regardless of the method used, a party must explain how their evidence relates to the relevant valuation date. *Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Otherwise, the evidence lacks probative value. *Id.* The valuation date for a 2015 assessment was March 1, 2015. I.C. § 6-1.1-4-4.5(f).
21. As discussed above, the Assessor has the burden of proving that the subject property's 2015 assessment is correct. Instead of offering any market-based evidence in support of the assessment, the Assessor primarily chose to challenge the Hughes's standing to bring an appeal before us. But the Assessor failed to cite any authority supporting her

argument that the Hughes's failure to attend the PTABOA hearing deprives them of standing to file an appeal with us, and we are unaware of any.¹ As the undisputed owners of the subject property, the Hughes have standing to appeal the PTABOA's determination to us. *See* 52 IAC 2-2-13(1).

22. The Assessor also briefly argued that the 2015 assessment is correct based on the cost approach. But the Assessor failed to offer any probative cost approach evidence. To the extent the Assessor thought that the 2015 PRC would serve that purpose, we note that merely applying the DLGF's Guidelines is insufficient. To prove that the 2015 assessment is an accurate reflection of the subject property's true market value-in-use, the Assessor needed to use market-based evidence. *Eckerling*, 841 N.E.2d at 678. Even if the Assessor used market-based evidence to develop the subject property's 2015 PRC, she failed to provide any meaningful testimony or analysis regarding its development. *See Long*, 821 N.E.2d at 471 (stating that a party must walk the Board through every element of its analysis in order to make a prima facie case).
23. Because the Assessor did not offer any probative valuation evidence, she failed to make a prima facie case that the 2015 assessment was correct. The Hugheses are therefore entitled to have the 2015 assessment reduced to its 2014 assessed value of \$93,100.
24. That does not end our review, however, because the Hugheses sought a lower valuation. To successfully make a case for a lower assessment, a taxpayer must use market-based evidence to "demonstrate that their suggested value accurately reflects the property's true market value-in-use." *Eckerling*, 841 N.E.2d at 678. The Hugheses offered a letter prepared by Debbie Hill, an associate real estate broker, outlining her opinion of the subject property's value based on a sales comparison approach. But, as discussed above,

¹ To the Board's knowledge, an assessor's only available remedy for a taxpayer's failure to attend a PTABOA hearing is to assess a \$50 penalty against them. *See* Ind. Code § 6-1.1-15-1(l) (repealed by P.L. 232-2017, Sec. 9, eff. July 1, 2017); *see also* Ind. Code 6-1.1-15-1.2(l) (added by P.L. 232-2017, Sec. 11, eff. July 1, 2017). Because neither party raised the penalty issue, we decline to address it further.

the Hugheses failed to timely exchange Hill's letter and we have therefore excluded it from the record.

25. Even if we did not exclude it, we would give Hill's opinion no probative weight. In her letter, she simply lists four properties that allegedly sold without providing their sale dates or even their sale prices. Hill also did little to identify the properties' relevant characteristics or compare them to the subject property. And she completely failed to explain how any relevant differences affected values. Thus, Hill's letter falls well short of providing the level of analysis the Tax Court has explained is necessary when relying on comparative sales data. *See Long*, 821 N.E.2d at 470-71 (holding that taxpayers' comparative sales data lacked probative value where they failed to compare relevant characteristics or explain how differences affected value).
26. Furthermore, Hill's letter addresses the subject property's value for a date more than two years removed from the relevant valuation date. Although Mr. Hughes testified that Hill's letter describes what the subject property was worth in 2015, Hill dated it December 4, 2017 and stated therein that she "researched recently sold comparables." We therefore conclude that Hill valued the subject property as of the date of her letter. Thus, the Hughes's failure to explain how Hill's valuation opinion related to the March 1, 2015 assessment date further undermines its probative value. *See Id* at 471 (holding that a party must explain how their evidence relates to the relevant valuation date for it to have probative value).
27. Because the Hugheses offered no probative market-based evidence to demonstrate the subject property's correct market value-in-use, they failed to make a prima facie case for a further reduction.

SUMMARY OF FINAL DETERMINATION

28. The Assessor failed to make a prima facie case supporting the subject property’s 2015 assessment. And the Hugheses failed to make a prima facie case for a reduction below its 2014 assessed value. Accordingly, we order the subject property’s 2015 assessment reduced to its 2014 assessed value of \$93,100.

This Final Determination of the above-captioned matter is issued by the Board on the date first written above.

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court’s rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court’s rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.